

FCC MAIL SECTION

JUL 16 3 12 PM '92

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 92M-790

03542

In re Application of)	MM DOCKET NO. 92-6
DOCKET NO. 92-6)	
NORMANDY BROADCASTING CORP.)	File No. BRH-910129UR
)	
For Renewal of License of)	
Station WYLR(FM))	
Glens Falls, New York)	
)	
and)	
)	
LAWRENCE N. BRANDT)	File No. BPH-910430MB
)	
For a Construction Permit)	
for a New FM Station on 95.9 MHz)	
at Glens Falls, New York)	

O R D E R

Issued: July 14, 1992;

Released: July 16, 1992

This is a ruling that will document bench rulings made by the Presiding Judge at the Prehearing Conference that was held on July 14, 1992.

New Procedural Dates

- July 16, 1992 - Normandy and Brandt to exchange by 4:00 p.m. all documentary exhibits and signed frozen sworn written testimony. ¹
- July 24, 1992 - Notification of witnesses for cross-examination (4:00 p.m.) by hand or fax transmission.
- July 28, 1992 - Opposition to cross-examination (4:00 p.m.) by hand or fax transmission. ²

Discovery Extension

- July 27, 1992 - Brandt's discovery of Normandy's documents as specified in Brandt's Supplemental Request For Production Of Documents Items 3 and 4.

Mr. Lynch has represented that he is disclosing methodology used in ascertaining community interests and needs in his sworn testimony to be

¹ See also Order FCC 92M-381, released March 26, 1992.

² The time is changed from 12 noon to 4:00 p.m. Cf. Order FCC 92M-381, supra.

exchanged on July 16, 1992. If Mr. Tillotson believes related documents are required the parties should first negotiate the production of needed documents. Mr. Lynch further represented that all issues/programs lists for WYLR for the period June 1, 1984 through December 31, 1986, will be mailed to Mr. Tillotson by Friday, July 17, 1992. The Presiding Judge will be available for a telephone conference, if necessary, to resolve any discovery dispute by July 27, 1992, the extended limited discovery date.

Normandy's Proffer

Normandy (through Mr. Lynch) was reminded on-the-record that the Findings and Conclusions in the Skidelsky Initial Decision (6 F.C.C. Rcd 2221) were not to be relitigated and that evidence relating to the Skidelsky ID would not be considered. Accordingly, the Presiding Judge ruled as being out-of-order the eighth paragraph of Normandy's Proffer Of Evidence:

Literally thousands of pages on file with regards to Skidelsky, et al. which (sic) outside of the three findings by Administrative Law Judge Kuhlmann, the veracity of which are unchallenged.

The Presiding Judge has afforded Normandy the opportunity to file and serve by **July 24, 1992**, a Proffer that does not exceed five pages in length describing the evidence and arguing the receipt of the evidence that it seeks to offer under its Paragraph Eight proffer quoted above. Normandy must also explain in its Proffer the relevancy of any such evidence to the issues in this case. Counsel for Brandt and the Bureau counsel may file any responsive pleading to the Proffer by **July 31, 1992**.³

Miscellaneous

Mr. Lynch indicated an uncertainty of the procedures for submitting his documentary evidence at the admissions session of August 4, 1992.⁴ Mr. Lynch must have two copies of each exhibit that he seeks to have marked by the reporter and offered into evidence.

Exhibits that are to be marked for identification and offered into evidence are to be serially numbered starting with the number 1. A prefix is to be used to indicate the party sponsoring the exhibits (e.g. Normandy Exh. No. 1, etc.). Each exhibit must be separately and consecutively paginated, including attachments. If stipulations are entered into, they are to be executed by the parties, prepared as joint exhibits, tabbed and paginated.

³ Bureau counsel and counsel for Brandt have represented that their positions on collateral estoppel and the law of the case as stated by the Review Board in the Skidelsky appeal and the Ocean Pines decision are already sufficiently set forth in the record of this case. The Presiding Judge agrees. Therefore, no responsive pleadings are expected.

⁴ Those procedures were not covered in detail at the Conference. If Mr. Lynch has specific questions on procedures he may make a one-time telephone inquiry to the Presiding Judge provided that counsel for Brandt or Bureau counsel is a party to the conference call.

Parties are to have copies of excerpts of any Commission filings that are expected to be introduced as direct evidence or used on cross-examination contained in a separate binder marked "Official Notice Exhibits" and appropriately tabbed and indexed. Unless cause is shown, official notice of Commission files, or their contents, shall not be permitted as a substitute for documentary evidence which has been properly marked, received in evidence and made a part of the hearing record of this case.

SO ORDERED. 5

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Richard L. Sippel".

Richard L. Sippel
Administrative Law Judge

5 A copy of this Order was mailed on date of issuance to Normandy Broadcasting's president, Christopher P. Lynch in Glens Falls, New York.